

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SENGNGUEN KOULAVONGSA,
Plaintiff,
v.
CALIFORNIA, et al.,
Defendants.

Case No.: 16cv1115-JLS (NLS)

**ORDER (1) ADOPTING REPORT
AND RECOMMENDATION AND (2)
DENYING AMENDED PETITION
FOR WRIT OF HABEAS CORPUS**

(ECF Nos. 6, 14)

Presently before the Court are Petitioner's First Amended Petition for Writ of Habeas Corpus ("Amended Pet."), (ECF No. 6), and Magistrate Judge Nita L. Stormes's Report and Recommendation for Order Denying Petition for Writ of Habeas Corpus ("R. & R."), (ECF No. 23).

Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district court's duties in connection with a magistrate judge's Report and Recommendation. The district court must "make a de novo determination of those portions of the report to which objection is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447 U.S. 667, 673–76 (1980); *United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). In the absence of timely objection, however, the Court "need only

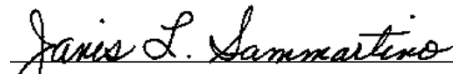
1 satisfy itself that there is no clear error on the face of the record in order to accept the
2 recommendation.” Fed. R. Civ. P. 72 advisory committee’s note (citing *Campbell v. U.S.*
3 *Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974)).

4 In the present case, Petitioner’s objections were due by November 17, 2016. (R. &
5 R. 9.) Over three months have passed since the due date, and the Court has heard nothing
6 from Petitioner. Accordingly, Petitioner failed to timely object to the Report and
7 Recommendation.

8 Finally, having reviewed the Report and Recommendation, the Court finds that it is
9 well reasoned and contains no clear error—Petitioner’s claim regarding his counsel’s
10 failure to object to certain evidence is foreclosed by *Tollett v. Henderson*, 411 U.S. 258
11 (1973), and Petitioner offers no evidence that his plea was coerced or that he would have
12 obtained a more favorable verdict at trial. The Court therefore (1) **ADOPTS** in its entirety
13 Judge Stormes’s Report and Recommendation, (ECF No. 23), and (2) **DENIES WITH**
14 **PREJUDICE** the Amended Petition, (ECF No. 6).

15 **IT IS SO ORDERED.**

16 Dated: March 9, 2017

17 
18 Hon. Janis L. Sammartino
19 United States District Judge
20
21
22
23
24
25
26
27
28